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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**DEBORAH ANNE SWAIN
3812 Willow Creek Trail
Mc Kinney, TX 75070**

Registered Nurse License No. 698400

RESPONDENT

Case No. 2013-389

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 9, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2013-389 against Deborah Anne Swain (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about February 23, 2007, the Board of Registered Nursing (Board) issued Registered Nurse License No. 698400 to Respondent. The Registered Nurse License expired on May 31, 2008 and has not been renewed.

3. On or about November 9, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2013-389, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and/Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

3812 Willow Creek Trail

Mc Kinney, TX 75070.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section

1 124.

2 5. As of January 3, 2013, neither the Certified Mail Receipt nor the First Class Mail was
3 returned to the Board. USPS Track & Confirm states that the Notice was left at the McKinney,
4 TX address on November 15, 2012 at 1:19pm.

5 6. Business and Professions Code section 2764 states:

6 The lapsing or suspension of a license by operation of law or by order or decision of
7 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
8 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
9 against such license, or to render a decision suspending or revoking such license.

10 7. Government Code section 11506 states, in pertinent part:

11 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
12 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
13 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
14 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

15 8. Respondent failed to file a Notice of Defense within 15 days after service of
16 the Accusation upon her, and therefore waived her right to a hearing on the merits of Accusation
17 No. 2013-389.

18 9. California Government Code section 11520 states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
20 agency may take action based upon the respondent's express admissions or upon other evidence
21 and affidavits may be used as evidence without any notice to respondent.

22 10. Pursuant to its authority under Government Code section 11520, the Board after
23 having reviewed the proof of service dated November 9, 2012, signed by Brent Farrand, finds
24 Respondent is in default. The Board will take action without further hearing and, based on
25 Accusation No. 2013-389 and the documents contained in Default Decision Investigatory
26 Evidence Packet in this matter which includes:

27 //

1 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2013-389,
2 Statement to Respondent, Notice of Defense (two blank copies), Request
3 for Discovery and Discovery Statutes (Government Code sections
4 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail
5 receipt or copy of returned mail envelopes; copy of USPS Track &
6 Confirm.

7 Exhibit 2: License History Certification for Deborah Anne Swain, Registered Nurse
8 License No. 698400;

9 Exhibit 3: Affidavit of Kami Pratab;

10 Exhibit 4: Out of State Discipline (Texas Board of Nursing);

11 Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of
12 Case No. 2013-389.

13 The Board finds that the charges and allegations in Accusation No. 2013-389 are separately and
14 severally true and correct by clear and convincing evidence.

15 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by
16 the Office of the Attorney General contained in the Default Decision Investigatory Evidence
17 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that
18 the reasonable costs for Investigation and Enforcement in connection with the Accusation are
19 \$955.00 as of January 3, 2013.

20 DETERMINATION OF ISSUES

21 1. Based on the foregoing findings of fact, Respondent Deborah Anne Swain has
22 subjected her following license(s) to discipline:

23 a. Registered Nurse License No. 698400

24 2. The agency has jurisdiction to adjudicate this case by default.

25 3. The Board of Registered Nursing is authorized to revoke Respondent's license(s)
26 based upon the following violations alleged in the Accusation, which are supported by the
27 evidence contained in the Default Decision Investigatory Evidence Packet in this case.
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a. Violation of Business and Professions Code section 2761(a)(4) - Disciplinary
action by another State Board of Nursing.

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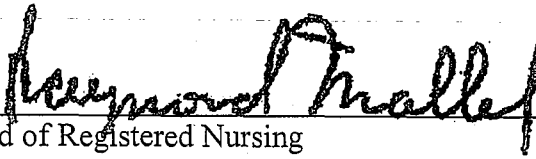
ORDER

IT IS SO ORDERED that Registered Nurse License No. 698400, heretofore issued to Respondent Deborah Anne Swain, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 2, 2013.

It is so ORDERED APRIL 2, 2013.



Board of Registered Nursing
Department of Consumer Affairs
State of California

Attachment:

Exhibit A: Accusation No. 2013-389

Exhibit A

Accusation No. 2013-389

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-389**

13 **DEBORAH ANNE SWAIN**
3812 Willow Creek Trail
Mc Kinney, TX 75070

A C C U S A T I O N

14 **Registered Nurse License No. 698400**

15 Respondent.

16
17 Louise R. Bailey, M.Ed., RN ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Executive
20 Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

21 2. On or about February 23, 2007, the Board issued Registered Nurse License Number
22 698400 to Deborah Anne Swain ("Respondent"). The license expired on May 31, 2008, and has
23 not been renewed.

24 **JURISDICTION**

25 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
26 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
27 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
28 Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for the following:

(a) Unprofessional conduct.

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Out-of-State Discipline)

7. Respondent is subject to discipline under Code section 2761(a)(4), in that effective October 20, 2011, pursuant to an Agreed Order for Deferred Discipline issued by the Texas State Board of Nursing, in a disciplinary proceeding titled, *In the Matter of Registered Nurse License Number 642152 Issued to Deborah A. Swain*, discipline was entered against Respondent's Registered Nurse License Number 642152. The Agreed Order for Deferred Discipline was based on numerous Findings of Fact, including the following: While employed as a staff nurse at Children's Medical Center Dallas, located in Dallas, Texas, Respondent practiced outside the scope of her license by attempting to establish an Intravenous (IV) site on a co-worker to initiate an infusion of IV fluids, without a physician's order. In addition, Respondent failed to assess and

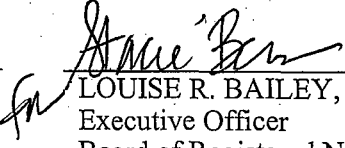
1 monitor the co-worker after the IV was established, thereby depriving the co-worker of timely
2 detection and intervention, in the event that the co-worker experienced a reaction to the infusion
3 of the IV fluids. The Agreed Order for Deferred Discipline is attached hereto as **Exhibit A** and
4 incorporated herein by reference.

5 **PRAYER**

6 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board of Registered Nursing issue a decision:

- 8 1. Revoking or suspending Registered Nurse License Number 698400, issued to
9 Deborah Anne Swain;
10 2. Ordering Deborah Anne Swain to pay the Board of Registered Nursing the reasonable
11 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: NOVEMBER 9, 2012

14 *fr*  LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
19 Complainant
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Exhibit A

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse	§	AGREED ORDER
License Number 642152	§	FOR
issued to DEBORAH A. SWAIN	§	DEFERRED DISCIPLINE

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of DEBORAH A. SWAIN, Registered Nurse License Number 642152, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(10), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on April 20, 2011, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).
2. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas.
4. Respondent received an Associate Degree in Nursing from Angelo State University, San Angelo, Texas on May 1, 1997 and a Baccalaureate Degree in Nursing from the University of Arizona, Phoenix, Arizona in 2005. Respondent was licensed to practice professional nursing in the State of Texas on June 30, 1997.
5. Respondent's nursing employment history includes:

5/1997 - 7/2004

RN

Hendrick Medical Center
Abilene, Texas

Respondent's nursing employment history continued:

7/2004 - 4/2006	RN	Medical Center of Plano Plano, Texas
4/2006 - 10/2007	RN	AmerisourceBergen Frisco, Texas
10/2007 - 12/2007	RN	Medical Center of McKinney McKinney, Texas
1/2008 - Present	Clinical Nurse	Children's Medical Center Dallas Dallas, Texas

6. At the time of the initial incident, Respondent was employed as a Clinical Nurse with Children's Medical Center Dallas, Dallas, Texas, and had been in this position for one (1) year.
7. On or about January 16, 2009, while employed as a Staff Nurse with Children's Medical Center Dallas, Dallas, Texas, Respondent attempted to establish an Intravenous (IV) site on a co-worker to initiate an infusion of IV fluids, without a physician's order. Respondent's conduct was outside her scope of practice and was not commensurate with her educational preparation.
8. On or about January 16, 2009, while employed as a Staff Nurse with Children's Medical Center Dallas, Dallas, Texas, Respondent failed to assess and monitor the co-worker after the physician established the IV site and initiated an infusion of fluids. Respondent's conduct deprived the co-worker of timely detection and intervention, in the event that the co-worker experienced a reaction to the infusion of IV fluids.
9. In response to Finding of Facts Number Seven (7) and Eight (8), Respondent admits, and states that her co-worker was under the care of a cardiologist and on that day her pulse was higher than normal. Respondent explains that the co-worker was told by a physician that she needed fluids so she asked Respondent to start an IV with supplies she had in her car. Respondent states she was unable to establish an IV site so a physician started the IV. Respondent states that she did observe the co-worker when they ate lunch together, but states she did not re-check the heart or lungs because the co-worker was not diaphoretic or complaining of chest pain. Respondent states there were no problems and the co-worker finished her shift with her heart rate remaining at the lower rate.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violations of Section 301.452(b)(10) & (12), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.11(1)(C)&(T) and 22 TEX. ADMIN. CODE §217.12(1)(B) &(4).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 642152, heretofore issued to DEBORAH A. SWAIN, including revocation of Respondent's license(s) to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of REMEDIAL EDUCATIONS, DEFERRED, and RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license(s) is/are encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL not commit any violation of the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education,

Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 et seq. for a period of five (5) years from the date of this Order.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address:* <http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html>.

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, RESPONDENT SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of

Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Information regarding Board-approved courses may be found at the following Board website address:*

<http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html>.

IT IS FURTHER AGREED and ORDERED that should an additional allegation, complaint, accusation, or petition be reported or filed against Respondent prior to the completion of this Order, the deferral period shall be extended until the allegation, accusation, or petition has been finally acted upon by the Board.

IT IS FURTHER AGREED that should RESPONDENT commit a subsequent violation of the Nursing Practice Act or Board Rules, this Order shall be treated as prior disciplinary action.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, including the successful completion of the required period of deferral, the complaint or complaints which formed the basis for this action will be dismissed and this Order will be made confidential to the same extent as a complaint filed under Section 301.466, Texas Occupations Code. Further, all encumbrances will be removed from Respondent's license(s) to practice nursing in the State of Texas, and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

IT IS FURTHER AGREED that until such time that this Order is made confidential, this Order is subject to disclosure in accordance with applicable law.

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CONTINUED ON NEXT PAGE.

2008/08/08
10:00 AM

RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order.

I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that when this Order becomes final and the terms of this Order become effective, a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, the Board may stay the dismissal of the complaint filed against me, and that I will be subject to investigation and possible disciplinary sanction, including revocation of my license(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 7 day of October, 2011.

Deborah A. Swain
DEBORAH A. SWAIN, Respondent

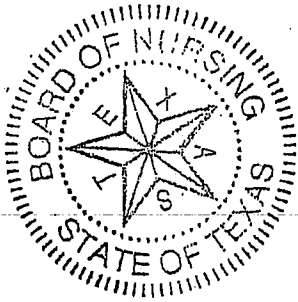
Sworn to and subscribed before me this 7th day of October, 2011.

SEAL

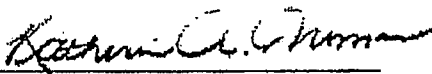
Dorothy A. Riley
Notary Public in and for the State of TEXAS



WHEREFORE, PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby ratify and adopt the Agreed Order for Deferred Discipline that was signed on the 7th day of October, 2011, by DEBORAH A. SWAIN, Registered Nurse License Number 642152, and said Order is final.



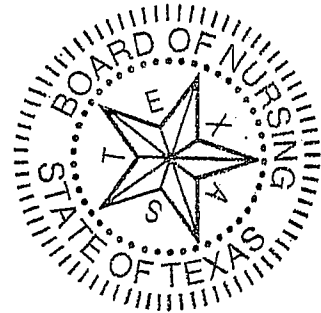
Effective this 20th day of October, 2011.


Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board

I certify this to be a true copy of the records on file with the Texas Board of Nursing.

Date: 11-7-11

Signed: 



RECEIVED
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